

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SAVOY APARTMENTS
Respondent

Case No.: I-00-70138
I-00-30219

FINAL ORDER

On September 17, 2001, the Government served a Notice of Infraction (No. 00-70138) upon Respondent Savoy Apartments alleging that it violated D.C. Official Code § 47-2824 by operating a swimming pool without a license. The Notice of Infraction alleged that the violation occurred on August 8, 2001 at 1101 New Hampshire Avenue, N.W. and sought a fine of \$500.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on October 18, 2001, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of \$500 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-30219) on October 31, 2001. Respondent then filed a plea of Deny and I set an evidentiary hearing for December 21,

2001. On December 4, 2001, however, Respondent filed a request to change its plea to Admit with Explanation and sought a suspension or reduction of the fine and the statutory penalty. I then issued an order canceling the hearing and permitting the Government to reply to Respondent's request. The Government did so on December 20, 2001.

II. Summary of the Evidence

Respondent asserts that it possessed a valid license when the Government's inspector visited the facility on August 8. According to Respondent, the employee on duty told the inspector that she could not find the current license because she mistakenly believed that the current license was an earlier one that had expired. Respondent states that it subsequently spoke with the inspector and believed that the matter had been resolved. It further states that it acted upon that understanding when it received the first Notice of Infraction and, therefore, did not respond.

The Government responds that it accepts Respondent's explanation, as its records indicate that Respondent did have a valid license on August 8. It suggests that the fine and the penalty be reduced to \$50 each, consistent with 16 DCMR 3214.3, which classifies the failure to post certain licenses as a Class 4 infraction, punishable by a \$50 fine for a first offense.

III. Findings of Fact

By pleading Admit with Explanation, Respondent has admitted violating D.C. Official Code § 47-2824 on August 8, 2001. Respondent had a valid swimming pool license on that date, but failed to post it conspicuously or to make it available to the inspector.

Respondent believed that it did not need to respond to the first Notice of Infraction because it previously had discussed this matter with the inspector and believed that the matter had been resolved. That belief was unreasonable, because the Notice of Infraction clearly informs Respondent in bold type that it

MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service.

Another section of the form (also in bold type) tells Respondent:

Failure to answer . . . each infraction on this Notice within 15 days of the date of service will result in assessment of a penalty equal to and in addition to the specified amount of the fine.

IV. Conclusions of Law

The Government has not opposed Respondent's motion to change its plea and that motion will be granted. Based upon Respondent's plea of Admit with Explanation, I find it liable for violating D.C. Official Code § 47-2824. A fine of \$500 is authorized for that offense. 16 DCMR 3214(u). I accept the Government's argument that a fine of \$50 is an appropriate sanction for Respondent's conduct in this case, because a fine in that amount is generally imposed for the failure to post a license. *See* 16 DCMR 3200.1(d) (Failing to post a required license ordinarily is a Class 4 infraction.)

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C.

Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondent's belief that it did not need to respond to the Notice of Infraction does not constitute good cause, because that belief was contrary to the explicit instructions on the Notice of Infraction. Therefore, I will not vacate the penalty. I will reduce it, however, in light of the Government's request that the penalty be commensurate with what would be assessed for the failure to file a timely response to a charge of not posting a license. *DOH v. East River Bagel, Inc.*, OAH No. I-00-70227 at 5-6 (Final Order, June 29, 2001). The penalty, therefore, will be \$50.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent's motion to change its plea is **GRANTED**, and a plea of Admit with Explanation is entered on its behalf; and it is further

ORDERED, that Respondent shall pay a total of **ONE HUNDRED DOLLARS (\$100)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **2/4/02**

John P. Dean
Administrative Judge